IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

Crl.Rev.Pet.No. 906 of 2000()

CRA.53/1997 of SESSIONS COURT, KASARAGOD
STC.1136/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

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REVN. PETITIONER: APPELLANT/ACCUSED

V.BALAKRISHNAN
AGED 30 YEARS
S/O.KAMMADASHU
HARIPURAM
PULLUR VILLAGE
P.O.HARIPURAM

BY ADV. SRI.M.THAMBAN

RESPONDENTS: RESPONDENT/COMPLAINANT

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1. SUB INSPECTOR OF POLICE
   HOSDURG.

2. STATE REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.906/2000

ORDER ON CRL.M.P.NO.4809/2000 IN CRL.R.P.NO.906/2000

DISMISSED

27.3.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.No.906 of 2000

Dated this the 27th day of March, 2007

ORDER

The revision petitioner stands convicted for the offence under Section 185 of the M.V. Act and sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs.2,000/- and in default, to undergo simple imprisonment for a period of 45 days.

2. The prosecution case is that on 13.1.1996, at about 23 hours, in front of the waiting shed at Pulloor on the public road, the accused drove the autorickshaw bearing registration No.KL-14A/1490 in drunken stage so as to endanger human life. It is pointed out by the counsel for the revision petitioner that as per Section 185 of the M.V. Act, breath analysis test is mandatory and it should be proved in the test that in his blood, alcohol exceeded 30 mg. per 100 ml. of blood. The above point has been upheld in the decision relied on i.e., Shibu vs. State of Kerala (2006(4) KLT 747) as wells as vide the decision of the Karnataka High Court in Rajavalse M. vs. State (1999 Criminal Law

Journal 58). In the present case, no breath analysis test was conducted. There is no evidence as to the alcoholic content in the blood. In the circumstances, I find that the accused cannot be convicted for the offence under Section 185 of the M.V. Act. Hence, the findings of the courts below are set aside. The accused is acquitted.

The revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl